

1
2 UNITED STATES BANKRUPTCY COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 In Re:

6 Chapter 11

7 LEHMAN BROTHERS Case No. 08-13555 (JMP)
8 HOLDINGS, INC., et al, (Jointly Administered)
9 Debtors.

10 -----X

11
12 DEPOSITION OF JONATHAN HUGHES

13 New York, New York

14 February 4, 2010

15
16 Reported by:

17 MARY F. BOWMAN, RPR, CRR

18 JOB NO. 27335
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5 February 4, 2010

6 9:40 a.m.

7 Deposition of JONATHAN HUGHES, held at
8 the offices of Jones Day, LLP, 222 East 41st
9 Street, New York, New York, before Mary F.
10 Bowman, a Registered Professional Reporter,
11 Certified Realtime Reporter, and Notary Public
12 of the State of New York and New Jersey.
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2 contract provision. So I am going to
3 instruct you not to answer this.

4 MR. GAFFEY: You didn't instruct him
5 not to answer the last one, Jack.

6 MR. STERN: Let's go forward and see
7 what you're trying to accomplish.

8 MR. GAFFEY: What I am trying to
9 accomplish is to find out whether the last
10 answer, which you did not instruct him not
11 to answer, also applies to Cleary Gottlieb.
12 That's what I am trying to find out.

13 MR. STERN: Is there another question?

14 Q. Were the standards that governed
15 Cleary's activities under 7.2 any different from
16 the standards that applied to Mr. Klein?

17 MR. STERN: Can you answer that
18 without interpreting the contract?

19 A. Without seeking to interpret the
20 contract, Cleary Gottlieb had authority to
21 represent Barclays at the time. Whether or not
22 it -- any representative of Cleary Gottlieb
23 discussed with others any aspect of the
24 transaction at that particular point in time, I
25 don't know.

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2 Q. So you don't know if Lindsee Granfield
3 or anyone else from Cleary Gottlieb spoke to
4 anyone assembled in the courtroom during the
5 off-the-record portion of the day about the
6 transaction?

7 A. I don't know --

8 MR. STERN: Anyone includes Lehman
9 representatives?

10 Q. Do you understand the question?

11 A. I do understand the question. I
12 think -- I don't recall whether Lindsee
13 Granfield spoke to anybody. I'm not aware that
14 any other representative of Cleary Gottlieb did
15 speak to anybody at the time.

16 Q. All right, fine. So I just want to
17 push a bit for Barclays' best knowledge of who
18 was speaking to who during this off-the-record
19 discussion.

20 Ms. Fife spoke to some people about
21 changes in the transaction, correct?

22 A. I believe so, yeah.

23 Q. And did Mr. Miller speak to people
24 about changes in the transaction?

25 A. I don't know the answer to that.

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2 Q. Did anyone from Cleary Gottlieb speak
3 to people about changes in the transaction?

4 A. I think I just said, I don't now
5 recall whether Lindsee Granfield did. I'm not
6 aware whether anybody else at Cleary Gottlieb
7 did. I believe there were other people present
8 who were not members of Cleary Gottlieb or
9 representatives of Barclays but were
10 representatives of Lehman Brothers who may also
11 have spoken to people at the time.

12 But as I said a little while ago, the
13 recollections of the people from Barclays who
14 were present are not really sufficiently clear
15 for me to be able to tell you what was said by
16 whom during that recess.

17 Q. So is Barclays able to say whether
18 anyone said anything in the off-the-record
19 session that was different or additional to what
20 Ms. Fife said on the record about the changes in
21 the transaction?

22 A. Again, as I said earlier, the
23 recollections of the people present from
24 Barclays are not detailed, but generally
25 consistent in the sense that their recollections

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2 of what was said during the recess was roughly
3 consistent with what was said subsequently on
4 the record.

5 Q. Another topic that you testified in
6 about in the earlier session of your deposition
7 covered at some length the inclusion of assets
8 in the clearance box, 15c3 assets, as well -- I
9 identify that just for sort of so we can be a
10 little efficient just moving into the topic.

11 At one point, at several points, you
12 expressed in your prior deposition some
13 disagreement with the use of the term
14 "additional assets" with regard to the clearance
15 box assets, 15c3 and exchange-traded
16 derivatives. Do you recall that?

17 MR. STERN: Objection to the form.

18 A. I don't recall using that particular
19 language. I do recall that I testified
20 previously that the transaction, both in
21 concept -- let me start again.

22 The transaction, at its commencement,
23 during all of the negotiations, and in its
24 description to the court, was a sale and
25 purchase of the business. That term "business"

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2 was defined in the APA and it was to include all
3 of the assets except to the extent they were
4 excluded. And that being the case, any of the
5 assets that were used in the business of Lehman
6 Brothers North America were assets that were
7 going to be sold and purchased in the
8 transaction.

9 So to that extent, if there was a
10 reference to a particular asset that was already
11 in the business, then I think -- then in those
12 circumstances, I think your question or your
13 preface would be accurate.

14 Q. So would it be accurate to say that
15 there were additional categories of securities
16 and other assets set forth in the clarification
17 letter? Would that be an accurate statement?

18 MR. STERN: Objection.

19 A. No.

20 Q. Would it be accurate to say that the
21 clarification letter amended the APA?

22 A. I would not say that it amended the
23 APA. I would say that it clarified certain
24 aspects of the APA, but it didn't -- it didn't
25 amend the deal.

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2 Q. So that would be an inaccurate
3 statement to describe the clarification letter
4 as having amended the APA?

5 MR. STERN: Objection to the form.

6 A. I don't think I said that either. I
7 think I said I wouldn't describe it in that way.
8 It may be I'd have to look again at the actual
9 language used in the clarification letter to see
10 if it was so -- if that term was used.

11 But substantively, it was a negotiated
12 method of describing changes during the course
13 of the week that needed to be documented. Those
14 changes were to different aspects of the
15 transaction, but not to the essence of the sale
16 and purchase.

17 Q. So isn't it a fact that the reason the
18 clearance box, 15c3 and other assets were
19 included in the clarification letter was because
20 LBI said it was unable to deliver to Barclays
21 assets that were originally intended to be sold
22 under the APA?

23 A. I -- well, there are a number of
24 aspects to your question which are -- are not
25 described in the way that I would describe them.

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2 as the Barclays repurchase agreement."

3 Do you see that?

4 A. I do see that.

5 Q. Is that an accurate description of the
6 repurchase agreement?

7 A. I don't think it is describing the
8 repurchase agreement.

9 Q. Well, --

10 A. It is referring to the repurchase
11 agreement.

12 Q. Take a look if you would at -- keep
13 your finger on page 5, but go back to page 1 of
14 the clarification agreement.

15 A. Yup.

16 Q. And you see in paragraph 1A(ii), a
17 reference to the Barclays repurchase agreement,
18 "as defined below." Do you see that?

19 A. I do see that language, yes.

20 Q. Now, go back to paragraph 13. Take
21 the time you need to go back through the letter,
22 but go back to paragraph 13 and tell me, please,
23 whether the definition below that's referred to
24 in paragraph 1 is the definition found in
25 paragraph 13 where the phrase "Barclays

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2 repurchase agreement" is in quotes and
3 underlined.

4 MR. STERN: Objection.

5 Q. Is that the definition of the Barclays
6 repurchase agreement?

7 MR. STERN: Objection to the form.

8 A. I think that the expression used in
9 paragraph 1A(ii) then leads you to the same
10 defined term. Does that describe all of the
11 relevant terms of what is here referred to as
12 the Barclays repurchase agreement? I don't
13 think it does because there is a lot of other
14 documents that define what that repurchase
15 agreement actually was.

16 Q. OK, fair point. At its elemental
17 level, in referring to paragraph 13, was the
18 repurchase agreement an agreement between
19 Barclays as purchaser and LBI?

20 MR. STERN: Now we are getting into a
21 topic -- you can answer this, but we have
22 not designated Mr. Hughes as a witness on
23 topics relating to the repurchase agreement.
24 If you are asking in relation to the
25 clarification letter, I think you can answer

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2 that.

3 So do you need to hear the question
4 again.

5 (Record read)

6 MR. STERN: Objection to the form.

7 A. The repurchase agreement was between
8 LBI and Barclays, but there were other parties
9 to the repurchase agreement.

10 Q. For example, Bank of New York as
11 collateral agent, correct?

12 MR. STERN: Objection to the form.

13 A. Bank of New York did act as a
14 collateral agent. JP Morgan also had acted
15 previously as a collateral agent.

16 Q. The Barclays repurchase agreement
17 referred to in paragraph 13 included Bank of New
18 York -- I will get to JP Morgan, but let me put
19 my question. The Barclays repurchase agreement
20 referred to in paragraph 13 included Bank of New
21 York as collateral agent, yes?

22 A. Bank of New York acted as a collateral
23 agent for Barclays in the sense that as
24 securities were transferred by LBI, using JP
25 Morgan which held the collateral, those

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2 transfers were made to Barclays and Bank of New
3 York was to hold the collateral for Barclays.

4 Q. Earlier in the week when there had
5 been the Fed repo, JP Morgan had been collateral
6 agent in the Lehman Fed repurchase agreement,
7 correct?

8 A. That's correct.

9 Q. When the assets in that Fed repo were
10 transferred into the Barclays repo, it was a
11 repo between Barclays, LBI and Bank of New York
12 as the collateral agent, is that what you are
13 describing?

14 MR. STERN: Objection to the form.

15 A. No, what I am trying to describe for
16 you, the role that Bank of New York played.
17 Bank of New York held the collateral for
18 Barclays after it had been transferred by LBI
19 through JP Morgan to Barclays.

20 Q. And Bank of New York held the
21 collateral as Barclays' agent, correct?

22 A. Yes.

23 Q. Now, the clarification letter in
24 paragraph 1 changes the definition of purchased
25 assets from the definition contained in the

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2 original asset purchase agreement, is that
3 correct?

4 MR. STERN: You can take a look at the
5 original.

6 A. Could you repeat your question.

7 Q. Paragraph 1 of the clarification
8 letter changes the definition of "purchased
9 assets" from the definition in the asset
10 purchase agreement, isn't that right?

11 A. I don't think it is right to say that.
12 I think it identifies different assets that,
13 when compared to the original APA, described
14 different assets that are included within the
15 definition and also identifies certain assets
16 previously included in the definition were no
17 longer included within the definition.

18 But I think the definition is not
19 altered.

20 Q. Would you take a look at the first,
21 introductory paragraph of the clarification
22 letter if you would. And in particular, read
23 through to yourself, please, the penultimate
24 sentence in that paragraph beginning this letter
25 agreement.

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2 included within those references. Whether, in
3 fact, they were intended to be so included, I
4 don't know. But just reading the document
5 today --

6 Q. The words "repurchase agreement"
7 appear in there, yes?

8 A. The words appear there, but also I
9 think in substance, it's referring -- because it
10 in part refers to securities that are owned by
11 LBI, then the repo securities would, I think
12 come within that description.

13 Q. And further up in that paragraph,
14 above the use of the word "repo," it refers to
15 the -- to long positions. Do you see that?
16 That's just for point of reference in the
17 document.

18 A. I do. I did read "long positions,"
19 yes. I can't find it now but I did read it.

20 Q. It says, "It being understood the long
21 positions referred to in clause D of purchased
22 asset does not have a book value of
23 approximately 70 million." Do you see that?

24 A. I see that, yes.

25 Q. Does this refresh your recollection,

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2 Barclays' recollection as to whether by 5 p.m.
3 on Friday -- withdrawn.

4 Is it a fact that at or around 5
5 o'clock in the evening on Friday the 19th, the
6 parties are still talking about the long
7 positions as they were originally referred to in
8 the asset purchase agreement?

9 MR. STERN: Objection to the form.

10 You really need to read the whole black
11 line.

12 A. Well, I don't think it does reflect
13 that, no. I think what it reflects is that
14 whoever was wielding the pen in that particular
15 moment thought to refer to long positions. By
16 that time, the parties I believe had already
17 agreed that the aspect of the transaction that
18 the phrase "long positions" refers to was no
19 longer relevant to the agreement, and by that
20 time, it had already been agreed between the
21 parties that the securities that formed part of
22 the repo would be transferred or were -- let me
23 say it again, were already identified as being
24 transferred within the sale.

25 But the fact that there is a reference

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2 to long positions in this document doesn't
3 necessarily reflect the actual agreement of the
4 parties at that time.

5 Again, the -- as you were good enough
6 to acknowledge, things are moving apace. It
7 was, I believe, quite difficult for the lawyers
8 drafting documents to be at one precise same
9 point in time as the negotiators acting on
10 behalf of Barclays and Lehman. Naturally, they
11 were doing their best to reflect at any one
12 point in time what they thought was then the
13 agreement. Thankfully one has a closing so at
14 some point, one gets the time when things are at
15 the same place.

16 Q. In a 363 sale, you also get to the
17 point where you need the judge's approval? I
18 mean, that comes before the closing?

19 MR. STERN: Objection to the form.

20 You are asking a legal opinion.

21 Q. Withdrawn.

22 Do you know if the agreement,
23 regardless of the drafting, the state of the
24 drafting at the time, do you know if the
25 agreement to identify assets included in the

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2 Barclays repurchase agreement had been made
3 before the end of the sale hearing?

4 A. I think they had, yes. Not least
5 because they were assets used in the business
6 and the business, as we have previously
7 discussed, had been identified.

8 Q. Let me show you, Mr. Hughes, what has
9 previously been marked as Deposition Exhibit 36
10 and ask you please to turn to -- the Bates
11 numbers are cut off on my copy. So I am going
12 to have to ask you to turn again to the first
13 page through to the first black line page in
14 that document. Are you there?

15 A. I am.

16 Q. And again, I want to go to the portion
17 of the letter that discusses purchased assets,
18 that's paragraph 1?

19 A. Yup.

20 Q. Again, in the interest of efficiency,
21 let me tell you what I want to know and then I
22 will put a question to you, all right? You will
23 see, as you look to the black line, that
24 reference we saw in Exhibit 35 to the long
25 positions and book value is black lined out, and

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2 what has been inserted here is a reference to,
3 among other things, is a reference to the
4 securities in the Barclays repurchase agreement.
5 Do you see where we are?

6 A. No.

7 Q. Take a look at 1A(ii) on the black
8 line. And you will see inserted in there, the
9 phrase "plus the securities owned by LBI and
10 either, A, pledged to purchaser or affiliates
11 under the Barclays repurchase agreement as
12 defined above as specified in the schedule
13 previously delivered by seller to purchaser or
14 affiliates or," and then there is more language.
15 Do you see that piece?

16 A. I do see that piece.

17 Q. Would you over leaf to the next page,
18 the black line, you see what that language
19 substitutes for is the provision we were
20 discussing a moment ago referring to the long
21 positions in the prior draft.

22 A. Well, whether it substitutes or not, I
23 don't know. Some of the language that you
24 referred to in Exhibit 35 has been deleted.
25 That, I agree with.

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2 Q. Now, if you would look at the cover
3 page of the entire document, you will see it is
4 an e-mail from Robert Messineo at Weil, sent
5 Saturday, September 20 at 2:39 p.m. Do you see
6 that?

7 A. That's what the cover sheet says, yes.

8 Q. Does Barclays have any knowledge as to
9 whether the language concerning securities
10 contained in the repurchase agreement was put in
11 any draft of the clarification letter prior to
12 the time reflected on this e-mail?

13 A. Well, --

14 Q. Let me withdraw that and try to be a
15 little plainer and I can move on to the next
16 topic. There are a series of clarification
17 letters. I will represent to you this is the
18 first time we have seen in any clarification
19 letters that we have seen the use of that
20 particular language about the securities in the
21 repo.

22 MR. STERN: Except that you have a
23 previous draft that refers to an Exhibit A,
24 so I'm not exactly sure.

25 MR. GAFFEY: I will do it the long

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2 might be coming with the transaction, but the
3 precise moments during the course of the week
4 when those agreements were finally reached, I
5 couldn't tell you exactly.

6 Q. Put those aside. Thank you. Mark
7 that please.

8 (Exhibit 582B, Objection of Barclays
9 Capital to Motion by Official Committee of
10 Unsecured Creditors marked for
11 identification, as of this date.)

12 Q. Mr. Hughes, I have put before you what
13 we have marked as deposition Exhibit 582B. It
14 is the objection of Barclays Capital to Motion
15 by Official Committee of Unsecured Creditors of
16 Lehman Brothers Holdings Inc., et al., pursuant
17 to 11 USC Section 105(a) and Hague Convention
18 (28 USC, Section 1781) filed by Barclays'
19 counsel on or around December 7, 2009. And I
20 would like you to turn your attention if you
21 would to -- you ought to read paragraphs 1 and
22 the beginning of paragraph 2. I want you to
23 have 1 for context and my questions will be
24 about paragraph 2.

25 Let me know when you have had a chance

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2 to read through those two paragraphs, please.

3 A. I've read through to the end of
4 paragraph 2.

5 Q. OK. The statement within paragraph 2
6 that says as follows, "In fact, this court was
7 never told that the transaction necessarily
8 would be flat with assets perfectly equal to
9 liabilities. Rather, the information given to
10 this court made clear that: A, Barclays would
11 pay 250 million plus the appraised value of the
12 real estate to acquire all assets used in the
13 business for which no total valuation was given
14 in the contract or otherwise." Do you see that
15 clause or that phrase?

16 A. I do.

17 Q. Now, what information was given to the
18 court, was disclosed to the court that made
19 clear that Barclays was paying 250 million plus
20 the appraised value of the real estate to
21 acquire all assets used in the business? Let me
22 withdraw that question.

23 Is it Barclays' view that it paid 2 --
24 that it was obligated to pay 250 million plus
25 the value of the real estate to acquire all

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2 assets used in the business irrespective of the
3 value of the assets?

4 MR. STERN: Objection to the form.

5 A. Could you repeat the question?

6 Q. Is it Barclays' view that it paid 250
7 million, it was obligated to pay 250 million
8 plus the value of the real estate to acquire all
9 assets used in the business, irrespective of the
10 value of the assets?

11 MR. STERN: Objection to the form.

12 A. I think it is Barclays' position that
13 we promulgated to give those things and --
14 together with giving up the 45 million of cash
15 repo and together with taking on certain
16 liabilities, and in return for that, Barclays
17 was to receive all of the assets used in the
18 business and at no point did anybody ever reach
19 an actual valuation with respect to those
20 assets.

21 So to that extent, there was a -- the
22 actual valuation of the assets was not, at the
23 end of the day, I wouldn't say it wasn't
24 relevant, but it was not determinative of the
25 transaction.

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2 In other words, because nobody had the
3 ability to finally determine the valuation of
4 each and every asset used in the business, it
5 was nevertheless understood that each of those
6 assets would be transferred. So to that extent,
7 the assets were to be transferred irrespective
8 of that value.

9 I should --

10 MR. STERN: There is no question,
11 there is no question.

12 Q. Is there anything you wanted to add?

13 A. I just want to add one thing to that;
14 that is, that I believe that that was also the
15 understanding of the advisors to Lehman Brothers
16 and I believe that that is actually the
17 testimony of the advisors to Lehman Brothers.

18 Q. So back to Barclays' view as opposed
19 to other people's testimony, Barclays' view, it
20 was Barclays' view that the court -- is it
21 Barclays' testimony that the court was told that
22 all the assets in Lehman's business, except
23 excluded assets, would be transferred to
24 Barclays regardless of what they were worth?

25 MR. STERN: Objection to the form.

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2 You can answer.

3 A. I think that the court was told that
4 all of the assets used in the business were to
5 be transferred and I think the court was also
6 told that it was not feasible to give a value
7 with respect to those assets. It was also --
8 the court was also told that it was wrong to
9 await valuations for each and every one of those
10 assets prior to making the final sale order.

11 And I believe the court was given from
12 time to time estimations of value with respect
13 to certain assets and certain liabilities and
14 the court made its ruling having heard all of
15 those things.

16 Q. Did the estimations you referred to
17 make clear to the court that the estimated value
18 of the financial assets Barclays was acquiring
19 would exceed the estimated value of the
20 liabilities associated with those assets?

21 A. I don't know whether the court
22 conducted a detailed, mathematical analysis at
23 that point in time.

24 I do believe the court was told that
25 all valuations were estimates. I believe the

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2 court also heard objections which were plain in
3 suggesting that Barclays was gaining more assets
4 than it should gain and more assets than,
5 therefore, the liabilities were that it was
6 taking on. And that the court rejected those
7 objections. From that I conclude -- not what
8 the court concludes -- but I concluded that the
9 court was told that it was possible that the
10 assets would exceed liabilities.

11 Indeed, it is also I think correct to
12 say that Barclays' view that there would be a
13 greater number of assets acquired than
14 liabilities was a matter of public record, at
15 least two days prior to that sale hearing. And
16 I think that it was therefore apparent or
17 capable of being apparent to everybody in the
18 court that that was the case.

19 Q. Now, other than the objection, the
20 objections that you referred to, was -- and
21 these matters of public record, was there any
22 other information that would have made clear to
23 the court that the estimated value of the
24 financial estimates Barclays was acquiring would
25 exceed the estimated value of the liabilities of

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2 those assets, other than the objections and the
3 public record?

4 MR. STERN: Objection to the form.

5 Asked and answered.

6 You can answer again.

7 A. Again, I believe there was sufficient
8 information presented by Weil Gotshal to the
9 court with respect to both assets and
10 liabilities from which the court could reach the
11 conclusion that you described.

12 Whether, in fact, the court exercised
13 or engaged in that mathematical exercise, again,
14 I can't say.

15 Q. And what are you specifically
16 referring to when you refer to the information
17 that Weil Gotshal supplied? I am talking about
18 the statements made at the hearing on the 17th
19 and the 19th --

20 A. In part, yes.

21 Q. And the contents of the sale motion?

22 A. In part, yes.

23 Q. Anything else?

24 A. When you say contents of the sale
25 motion, what would you include in that?

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2 Q. The written motion that Lehman filed
3 on Wednesday the 17th.

4 A. I'm not sure of the full content of
5 that was to be honest with you.

6 Q. I'm really only looking for sources.
7 There is the written motion, there is the
8 hearing on the 17th, there is the hearing on the
9 19th. Other than those three possible sources,
10 do you know of any other source where Weil
11 Gotshal would have given that information to the
12 court?

13 A. I think there were other
14 representations made to the court after the 19th
15 which, in Barclays' view, evidence what was
16 plain at the time of the hearing.

17 Q. When did that take place? You are
18 referring to the December settlement hearings?

19 A. I'm referring to the clarification
20 letter. I'm referring to the subsequent
21 proceedings before the court, including the
22 December JP Morgan settlement hearing, the Bay
23 Harbor proceedings, and the like.

24 Q. Prior to the issuance of the sale
25 order, let's use that point. Apart from the

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2 issuance of the sale order?

3 MR. STERN: Objection to the form.

4 You can answer.

5 Can you read the question again.

6 (Record read)

7 A. I think there were aspects of the
8 press release and the call with analysts that
9 covered the same topic -- some of the same
10 topics that were also covered during
11 presentations to the court.

12 Whether the descriptions matched or
13 were directly similar, I couldn't say without
14 comparing the two.

15 Q. Mr. Hughes, I am putting before you
16 the press release, a press release which
17 previously has been marked as Exhibit 344A. Is
18 that the press release that you are referring
19 to?

20 A. It looks like it, yeah.

21 Q. Can you tell me where in that press
22 release I would find the information that would
23 inform me that the estimated value of the
24 financial assets Barclays was acquiring would
25 exceed the estimated value of the liabilities

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2 associated with those assets?

3 A. I should preface my answer by saying
4 this press release, because it was dated 17th of
5 September, referred to aspects of the
6 transaction which were different on September 17
7 as compared to later in the week.

8 Q. Just let me follow up on that a little
9 bit. Did that change over the week? Did
10 whether or not Barclays would receive assets
11 that exceeded the estimated value of the
12 liabilities associated with those assets, did
13 that concept change in between the signing of
14 the APA on the 16th and the sale hearing?

15 A. The concept did not change. How the
16 difference was made up ultimately did change
17 because it was described earlier in the week by
18 reference to certain portions of the transaction
19 and later in the week, it was described by
20 reference to different portions of the
21 transaction. But the concept of there being a
22 difference between assets and liabilities never
23 changed.

24 Q. The concept of the gain for Barclays
25 never changed?

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2 A. Correct.

3 Q. Let me go back to the press release.
4 Could you tell me where in the press release I
5 find the information that gives me notification
6 of the concept that there would be a gain for
7 Barclays in the transaction?

8 A. There is reference to, in paragraph 2,
9 to the acquisition of trading assets with a then
10 estimated value of approximately 72 billion
11 dollars. And liabilities with a then-estimated
12 value of approximately 68 billion dollars.

13 There are then references to other
14 assets and other payments and other features of
15 the then intended transaction which I think made
16 plain that the amount of assets acquired would
17 be greater than the amount of liabilities
18 acquired.

19 Q. And that --

20 A. So hopefully that answers the
21 question. Does it specifically state language
22 in the terms of your question, no. But it is
23 clear larger amounts of assets were to be
24 acquired than liabilities.

25 Q. And anyplace else other than that

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2 section --

3 MR. STERN: Objection to the form.

4 Q. -- from which the fact or inference
5 can be made of a gain for Barclays?

6 MR. STERN: Objection to the form.

7 A. Well, I think I would include the
8 other aspects of my prior answer because I think
9 one has to take the whole of the -- whole of the
10 statement to fully understand what the intention
11 then was to be expressed.

12 Q. And the delta between assets and
13 liabilities that's described in paragraph 2 of
14 the press release, does that take into account
15 the assumption of liabilities by Barclays for
16 compensation and cure?

17 A. I don't know whether those specific
18 numbers then included estimates for comp and
19 cure, nor do I know whether it included then all
20 of the assets. I think -- it is hard for me to
21 recall that, not least because, as I think you
22 know, the transaction that was being described
23 in this statement is -- it includes
24 descriptions, which as I said earlier, are very
25 different, very different from the description

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2 that is ultimately or that describe the ultimate
3 transaction.

4 So what was specifically included or
5 intended to be included at this point, I
6 couldn't say exactly.

7 Q. So if Judge Peck had seen this press
8 release by the time of the sale hearing, it
9 wouldn't be describing the deal before him
10 anyway, is that right?

11 MR. STERN: Objection to the form.

12 A. There would be aspects of the
13 transaction that had changed and some of those
14 aspects I believe were described, though I
15 believe not all of the aspects or all of the
16 changes were described. But as we -- as I
17 previously said in answer to one of your earlier
18 questions, the concept of Barclays deriving a
19 gain on the transaction did not change.

20 It was never Barclays' intention to do
21 a transaction other than one which yielded a
22 gain and I believe it was apparent to --
23 throughout the discussions that that would be
24 the outcome.

25 I don't think -- I mean, this series

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2 of questions you prefaced with a reference to an
3 earlier exhibit, there was mention of the word
4 "flat." At no point in time was there ever
5 discussion that a transaction would be flat,
6 that there would be any match between assets and
7 liabilities. That was never a portion of the
8 discussion ever.

9 Q. By discussion, you mean discussion
10 with the court?

11 A. I mean with anybody.

12 Q. Let's focus in on the court. Was
13 there ever a discussion with the court to that
14 effect?

15 A. That would be flat, no.

16 Q. Was there ever discussion with the
17 court that there would be a day one gain for
18 Barclays?

19 MR. STERN: Objection to the form.

20 A. I didn't recall anybody using that
21 specific expression, but as I said earlier, it
22 was clear to the court that all of the assets in
23 the business were to be transferred. What there
24 were -- there were strident objections made
25 during the course of the hearing that Barclays

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2 was getting a windfall, that the transaction
3 shouldn't be finalized while some documentation
4 with respect to it remained outstanding, and the
5 court rejected those objections as we have also
6 discussed earlier.

7 What was actually presented to the
8 court was the result of the, you know, the
9 judgment of Weil Gotshal and they described what
10 they felt was relevant to be described. So my
11 belief is the court did know and understand what
12 it needed to understand to reach the conclusion
13 it reached.

14 Q. Is it your view that the court knew
15 that Barclays was going to make a gain on day
16 one?

17 MR. STERN: Objection to the form,
18 asked and answered.

19 You can answer it again.

20 A. I don't think I can say it differently
21 from what I have already said. I don't know
22 what was in the court's mind specifically.

23 I can tell you what I have told you
24 about what I heard and what I believe was said
25 by reference to the transcript, by reference to

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2 other documents that you also mentioned.

3 Q. And that's by reference to the sale
4 motion, the two hearings, the press release and
5 the analyst call?

6 MR. STERN: Objection, asked and
7 answered.

8 Q. Anything else?

9 MR. STERN: Objection, asked and
10 answered.

11 A. I think I have answered the question.
12 The only part of it I think is worth repeating
13 is there were specific objections raised that
14 deal with your question, by which I mean there
15 were specific objections raised with the court
16 in which complainants suggested that Barclays
17 was getting much more by way of assets and value
18 than it was giving or taking on as liabilities.

19 The necessary implication of that was
20 that Barclays was to acquire more in assets than
21 it was giving up in liabilities, which would
22 necessarily yield some form of gain. Whether
23 the court understood that to be an accounting
24 gain is a very different question and I don't
25 know whether the court made any judgment about

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2 an accounting gain.

3 Q. So there was enough information in
4 Barclays' view for the court to discern that
5 there was a gain for Barclays of some kind out
6 of the transaction, correct?

7 MR. STERN: Objection to the form.

8 Let me hear the question again.

9 (Record read)

10 A. I believe so.

11 Q. Was there --

12 A. Whether it is relevant or not, I don't
13 know. Because as I say, the court was concerned
14 to approve the sale of a business as had been
15 described on, you know, I think in very clear
16 detail.

17 Q. Was there enough information in
18 Barclays' view for the court to discern that the
19 Lehman assets being transferred in the sale of
20 the business were being transferred irrespective
21 of their value?

22 A. I think I answered that question
23 earlier.

24 Q. I'm not sure you did. Could I ask you
25 for an answer to it here? Was there enough

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2 information in Barclays' view for the court to
3 discern that the Lehman assets being transferred
4 in the sale of the business were being
5 transferred irrespective of their value?

6 MR. STERN: Objection, asked and
7 answered.

8 A. I think the answer is yes, in the way
9 that I described earlier.

10 MR. STERN: Let's take a short break
11 if we can. I don't know if and when you are
12 planning to break for lunch. I don't know
13 if it is soon.

14 MR. GAFFEY: I couldn't promise you I
15 would be done before lunch. Do you want to
16 eat now?

17 MR. STERN: Let's take just a couple
18 minutes.

19 THE WITNESS: I'm happy to take two
20 minutes.

21 (Recess)

22 Q. In the brief that I showed you before,
23 Mr. Hughes, in paragraph 2, it is an Exhibit
24 582B. The statements we have been talking about
25 are prefaced with the sentence, "In fact, this

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2 court was never told the transaction necessarily
3 would be flat with assets perfectly equal to
4 liabilities."

5 In Barclays' view is the concept of a
6 flat exchange of assets and liabilities
7 inconsistent with the existence of an accounting
8 gain?

9 MR. STERN: I am going to object to
10 the form.

11 You can answer it if you understand
12 the question.

13 A. I should certainly preface my answer
14 by saying I'm not an accountant and so I can't
15 give you an answer which is necessarily correct,
16 if the answer requires real accounting
17 knowledge. With that proviso, I think the
18 answer is yes.

19 I should also add that it was an
20 imperative for Barclays in conducting this
21 transaction that there would be a sufficient
22 difference between the two, that Barclays would
23 yield a gain in order that it be a capital
24 accretive transaction.

25 Q. It was imperative that a gain be in

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2 existence on the first day?

3 A. Yes.

4 Q. Was the fact of that imperative that
5 there be a first day gain for Barclays disclosed
6 to the court?

7 A. Again, as I think I answered
8 previously, the court was told the detail
9 relevant to the transaction, that Harvey Miller
10 and his colleagues at Weil Gotshal understood
11 what were relevant and subsequently confirmed
12 were relevant to the court's assessment of the
13 transaction.

14 Q. And apart from the judgment about what
15 was relevant or not, as a fact, was Barclays
16 aware --

17 MR. STERN: I don't think he has
18 completed his answer.

19 Q. I am sorry, did I interrupt you?

20 THE WITNESS: I have.

21 MR. STERN: You have? I am sorry.

22 Q. As a matter of fact, was the court
23 told that it was imperative for Barclays to make
24 a first day gain?

25 A. Not that I am aware.

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2 Q. Was it a condition of the agreement
3 that Barclays make a first day gain?

4 A. It was a precondition for Barclays.

5 Q. Was that precondition embodied
6 anywhere in the asset purchase agreement or the
7 clarification letter?

8 A. To the extent that it delivered --
9 those agreements delivered that gain, yes.

10 Q. Was there a point where Barclays said
11 it would not close if it did not achieve a first
12 day gain?

13 MR. STERN: Objection to the form.

14 A. I don't think Barclays used that
15 expression, but Barclays did make it plain
16 during the course of the negotiations that
17 without being able to satisfy itself with
18 respect to the relative valuations of assets and
19 liabilities, it may well not close the
20 transaction.

21 Q. Did Barclays allow that it would -- it
22 may well not close the transaction on Friday the
23 19th when it expressed its concern about the
24 value of the assets in the repo?

25 A. Again, whether that specific language

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2 was used, I don't know, but that was the -- that
3 was the intimation, yes.

4 Q. And was it because Barclays expressed
5 its concern about insufficient value in the
6 assets that it was getting that 15c3 and
7 clearance box assets and exchange-traded
8 derivatives were added to the deal?

9 MR. STERN: Objection to the form.

10 A. I think I have already answered that
11 question at length. Your grouping of
12 exchange-traded derivatives with clearance box
13 assets and 15c3 is entirely inappropriate.

14 Q. Take the exchange-traded derivatives
15 out. Just with respect to 15c3 and clearance
16 box assets?

17 A. They were not added, as I have already
18 answered.

19 Q. Were they identified in order to make
20 up a shortfall between what Barclays wanted and
21 what it thought it was going to get under the
22 transaction?

23 A. I think I have answered that question,
24 too.

25 Q. I don't think you have. We have used

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2 Did Barclays talk to FSA about whether
3 or not the sale transaction would result in a
4 gain for Barclays?

5 A. I believe Barclays had discussions
6 with the FSA to inform the FSA about the detail
7 of the transaction, that the FSA would need to
8 draw its own conclusions about the impact of the
9 transaction for Barclays, as distinct from the
10 detail of the transaction itself and whether it
11 was a good transaction and whether it was going
12 to make Barclays money or not.

13 I believe that FSA's natural focus was
14 to understand the impact of the transaction on
15 Barclays as a whole given that its principal
16 role in that context is to regulate Barclays as
17 a banking institution.

18 Q. So to that end, did Barclays provide
19 to the FSA copies of the asset purchase
20 agreement?

21 A. I don't know which documents
22 specifically were given to the FSA. I think
23 some documents were, I know were given to FSA.
24 Whether they included the asset purchase
25 agreement itself, I'm not sure.

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2 Q. Would your answer be the same with
3 respect to copies of the transcripts of the
4 hearings on the 17th and the 19th and the
5 clarification letter?

6 A. By which do you mean -- I'm not sure
7 whether they were, in fact, given over, yes, the
8 answer would be the same.

9 MR. GAFFEY: That is an area that we,
10 just on an instruction level, Jack, want to
11 deal with. Chris Green sent us a list of
12 Bates numbers which purport to be the
13 documents responsive to the parties'
14 requests for communications with the FSA and
15 none of them include the deal documents
16 which is a question we would like to know,
17 if they were submitted. So I would need a
18 witness or some follow-up on the document
19 basis.

20 MR. STERN: We will check.

21 MR. GAFFEY: Can we mark this please.

22 THE WITNESS: Can I ask my counsel a
23 question.

24 MR. GAFFEY: Sure.

25 (Exhibit 583B, document Bates stamped

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2 BCI-EX(S) 53519 through 25 marked for
3 identification, as of this date.)

4 Q. Do you want to add anything or not?

5 A. No.

6 Q. Mr. Hughes, I've put before you a
7 document we have marked as deposition Exhibit
8 583B, bearing Bates numbers BCI EX(S) 00053519
9 through 53525. And this appears, sir, to be an
10 e-mail from John Varley to the Hector Sants or
11 Santos?

12 A. Sants.

13 Q. Of FSA entitled "Press Release" and
14 attached is a copy of a press release we spoke
15 about a while ago.

16 A. Yup.

17 Q. Do you recognize it to be such?

18 A. I do.

19 Q. And for what reason did Barclays
20 submit the press release to Hector Sants of FSA?

21 A. I'm not sure definitively, but there
22 are at least two reasons why I think it likely.
23 First of all, a release of this form would have
24 been required to have been shared with the FSA
25 by reason of U.S. regulations.

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2 Q. Simply because it is a press release?

3 A. Yes, yes, in the sense that it
4 contains information which is of relevance to a
5 UK-regulated entity and statements made to the
6 public with respect to that are required to be
7 shared with the FSA.

8 Hector Sants is the chief executive of
9 the FSA, and I would imagine that in any event,
10 something of this level of interest would be
11 something that John Varley as the group chief
12 executive would likely also want to share with
13 Hector Sants in any event. What, in fact, John
14 and Hector may have discussed at the time with
15 respect to this, I don't know.

16 Q. Do you know if the transcript of the
17 analyst call we spoke about before was submitted
18 by Barclays to FSA?

19 A. I don't know the answer to that.

20 Q. Would the transcript, would a
21 transcript of an analyst call be a public
22 statement of the type that FSA would expect to
23 receive as Barclays regulator?

24 A. I don't know the answer to that. I
25 hesitate because I think I probably should know

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2 the answer to that because it is really a
3 question of English law and not a question of
4 anything else.

5 But I'm not sure that he would be
6 required in the same way as a press release
7 because by its nature, the transcript I think is
8 an internal document that is recording a public
9 event. The public event would have been
10 available and -- but whether the transcript
11 would be required to be shared, I don't know.

12 Q. That's the reason I ask, because when
13 we spoke about that before, you referred to two
14 public record events. One was the press release
15 and the other was the analyst call. So is the
16 analyst call sufficiently a public record event
17 that a record of it would need be submitted to
18 your regulator?

19 A. I don't know that a record of the
20 event needs to be submitted. It is, in fact, a
21 public event, so that typically, there is an
22 opportunity for a variety of people to dial in.
23 Whether there was, in fact, a need to disclose
24 any subsequent record of it, I couldn't tell
25 you.

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2 Q. Let me back up a bit in time. When
3 the access to the analyst call is published, how
4 is it published?

5 A. My recollection of the basis upon
6 which these things are arranged is dim and
7 distant, so I couldn't tell you.

8 Q. What I really want to know is how
9 would FSA know it could dial into the analyst's
10 call?

11 A. Again, I don't know.

12 Q. I'm afraid my English education takes
13 us as far as freeing Roman slaves so we would
14 have to defer to you.

15 A. Apparently that was a good thing.

16 (Exhibit 584B, document Bates stamped
17 BCI EX(S) 23915 through 17 with attachment
18 marked for identification, as of this date.)

19 Q. Mr. Hughes, I have put before you what
20 we have marked as Exhibit 583B. The document
21 bearing Bates numbers BCI EX(S) 23 -- 584, beg
22 your pardon.

23 I put before you what we have marked
24 as 584B bearing Bates numbers BCI EX(S) 0023915
25 through 917 and then attached to it are two

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2 correspondence -- to what correspondence were
3 you referring?

4 A. Specifically to some e-mail exchanges
5 which were primarily directed from the OCC to
6 the trustee or from the OCC's external lawyers
7 to the trustee, the trustee's representatives
8 and a number of the other interested parties
9 which I believe were made available to either
10 representatives of the creditors committee or to
11 its advisors during the course of that weekend.

12 Again, as I said earlier, I couldn't
13 be absolutely sure that the creditors committee
14 did see those, but that was my understanding,
15 that they were made available at that time.

16 Q. And when you say made available, do
17 you mean that they were initially distributed to
18 the committee or its representatives or somehow
19 otherwise made accessible to them?

20 A. I think I mean the latter because I
21 don't know whether -- I can't recall now
22 whether, in fact, either representatives of the
23 committee or its advisors were included in the
24 e-mail chains that contained the information
25 that I am referring to.

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2 Q. To be clear, Barclays does not have an
3 understanding of a specific meeting where the
4 creditors committee or its representatives were
5 present where the topic of exchange-traded
6 derivatives was discussed, is that correct?

7 MR. STERN: Objection to the form.

8 You mean between Barclays the committee?

9 Q. No, I mean a meeting involving Lehman,
10 Barclays -- a meeting involving Lehman or
11 Barclays where the committee was present.

12 A. As I mentioned a moment ago, I believe
13 that the creditors committee or its
14 representatives or its external advisors were
15 present during most of the weekend and there
16 were, I think, discussions during the course of
17 that weekend relating to margin and the
18 exchange-traded derivatives.

19 I couldn't specify a particular moment
20 at which I could say either representatives of
21 the committee and Barclays or I should say or
22 advisors to the committee and Barclays were both
23 present and that specific topic was being
24 discussed.

25 I should add that while it is not a

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2 discussion, there were agreements that were
3 shared during the course of that weekend among
4 interested parties that related to -- also to
5 these topics and my belief also were those
6 agreements were made available to the creditors
7 committee.

8 So I have in mind a -- I think there
9 were three agreements in total that referred in
10 part to these topics. And they included a
11 collateral agreement, transfer and assumption
12 agreement and the clarification letter, all of
13 which have something to say about these issues
14 and I believe that they were all also made
15 available to representatives of the committee
16 and the committee's advisors during the course
17 of the weekend.

18 Q. But apart from your understanding that
19 they were made available, you're not aware of
20 them actually specifically being distributed to
21 members of the committee or their advisors, is
22 that correct?

23 A. That's correct.

24 Q. And the same with respect to the
25 meetings either among Lehman and Barclays and

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2 the committee, other than the fact that you
3 believe the committee had access to those
4 meetings, you are not aware of any specific
5 meeting where exchange-traded derivatives was
6 discussed, correct?

7 MR. STERN: Objection to the form.

8 The question -- you are asking a very broad
9 question here. You are not aware of any
10 specific meeting where exchange-traded
11 derivatives was discussed?

12 Q. Where the creditors committee was
13 present. Apologies.

14 A. The creditors committee and its
15 representatives were present during one very
16 lengthy meeting which took place either on the
17 Saturday or the Sunday which meeting took place
18 in fits and starts, so to speak. In other
19 words, it commenced, continued for a period,
20 there were recesses, and the relevant parties
21 resumed on more than one occasion.

22 It is possible that during that
23 lengthy meeting, exchange-traded derivatives
24 were discussed. To be fair, I can't recall
25 specifically whether it was, but it is, it's

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2 possible during that lengthy meeting. I'm not
3 aware of any other specific meeting where I
4 could say definitively, the creditors committee
5 was there, and there was an actual discussion on
6 this topic that I could recount to you.

7 Q. During that weekend, at any time prior
8 to the closing on the 22nd of September, did
9 Barclays receive any information from Lehman
10 concerning the amount of cash or securities that
11 Lehman maintained at the exchanges for its
12 derivatives business?

13 A. I believe there were communications
14 between Lehman and representatives of Barclays
15 on that topic, but I don't believe there was any
16 point prior to the closing which Lehman was able
17 to give Barclays any accurate or reliable
18 indication of what the amount of cash or
19 securities there might be at any exchange.

20 Q. Do you know who participated in those
21 discussions?

22 A. From Barclays, I think there were
23 communications and discussions between --
24 involving Liz James, Al Hodge, possibly others.
25 Who was involved from the Lehman side, I

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2 couldn't recall.

3 Q. And do you have an understanding as to
4 what the sum and substance of those
5 conversations were?

6 A. At a high level, they were in part an
7 attempt by Barclays to ascertain what, in fact,
8 the exchange-traded derivative business of
9 Lehman represented because from the beginning of
10 that week of the 15th, it had been agreed that
11 Barclays was to acquire all of the
12 exchange-traded derivatives business, and
13 naturally, Barclays was interested to ascertain
14 what that might mean in terms of actual
15 positions, be they futures or options positions
16 and actual margin held to support those
17 positions or held in connection with those
18 positions.

19 So in essence, they were attempts by
20 Barclays to establish facts and figures with
21 respect to that. Though as I say, I believe
22 that prior to closing, we were not able to get
23 information that was reliable in any way to
24 allow us to satisfy ourselves exactly what those
25 positions were.

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2 Q. Understanding your point about the
3 reliability of the information, do you recall or
4 do you have an understanding if any specific
5 amounts were discussed during those meetings?

6 A. I don't know of specific numbers
7 discussed that relate back to your earlier
8 question about cash and securities. There had
9 been some information provided by Lehman
10 Brothers which indicated certain levels of
11 assets and liabilities and that may have also
12 referred to particular holdings at particular
13 exchanges or clearing houses. But beyond -- but
14 I couldn't recall specific numbers or specific
15 details for you right now.

16 Q. Do you have an understanding as to who
17 from Lehman provided that information?

18 A. I would have to refer back to some of
19 the e-mail exchanges between people like Liz
20 James and Al Hodge as I mentioned earlier. As
21 Mr. Stern mentioned earlier, there may also be
22 discussions between Cleary Gottlieb and Sullivan
23 & Cromwell and their opposite numbers advising
24 Lehman Brothers because certainly a good -- you
25 know, some portion of the negotiation and

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2 discussions relating to the exchange-traded
3 business for Barclays were handled by Cleary
4 Gottlieb and possibly also assisted by Sullivan
5 & Cromwell.

6 Q. Do you have an understanding as to
7 whether or not Barclays received information
8 from the actual exchanges themselves at any
9 point prior to the closing about the amount of
10 cash and/or securities that Lehman maintained
11 with those exchanges?

12 A. It's possible that Liz James or Al
13 Hodge or others associated with Barclays'
14 futures and options business had discussions
15 with exchanges or clearing houses. I
16 couldn't -- I couldn't recall any of those for
17 you now. I think we did learn of information
18 coming from the CME, in particular with respect
19 to its takeover of certain assets of Lehman
20 Brothers that were held at the CME on behalf of
21 the CME prior to closing.

22 And there were communications with the
23 OCC, as I have said, with respect to all of the
24 assets that the OCC was holding.

25 Again, all of which were or the

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2 pertinent parts of which were ultimately
3 recorded in the agreements that I mentioned
4 earlier. Whether there are other specific
5 discussions with other exchanges or other
6 clearing houses, I can't now recall.

7 Q. Do you recall with any more
8 specificity the timing of Barclays' receipt of
9 the information from the CME?

10 A. I couldn't say with certainty when we
11 first received that information, but I believe
12 it was before the closing.

13 Q. How about from the OCC?

14 A. Again, the first communication, I
15 couldn't necessarily pinpoint. But there were
16 certainly communications from and to the OCC, I
17 would say from the 19th through into the Sunday,
18 possibly into the early hours of Monday morning
19 on the 22nd. But I think certainly from the
20 19th through to Sunday, there were
21 communications that we both participated in and
22 were aware of.

23 Q. Do you recall with respect to the OCC
24 whether an amount was discussed of the cash
25 and/or securities that the OCC was maintaining

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2 with respect to Barclays was discussed?

3 A. I'm not sure whether specific numbers
4 were discussed. But what I do recall is that
5 there was a very clear discussion on e-mail and
6 there were clear discussions among our
7 representatives about the transfer, the
8 agreement to transfer all of the collateral,
9 whatever its amount, and any property associated
10 with the exchange-traded derivatives business,
11 and I recall that the OCC particularly was
12 concerned to establish that all of those assets,
13 cash, securities, whatever form of property were
14 to be transferred, and they were very keen
15 indeed urgent in seeking the relevant parties'
16 agreement to those transfers which, as I have
17 said, were ultimately recorded in the agreements
18 that I have touched on earlier.

19 Q. How about from the CME? Were amounts
20 discussed in the conversations with the CME?

21 A. I seem to recall a number of the
22 takeover of assets of roughly 700. But I --
23 million, but I could be wrong about that number.
24 Roughly 700 million. It may be in the 800
25 million, but something of that order was the

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2 amount I believe seized by the CME of collateral
3 that had been held I think on the 17th by LBI,
4 which may, I think, also have been part of the
5 reason why the OCC was so keen to get agreement
6 among all the parties about what should happen
7 to the collateral that it was holding, both to
8 insure that it transferred those assets properly
9 to Barclays, but also understood itself what its
10 legal and -- what its position would be with
11 respect to Barclays and that margin and the open
12 contracts that would be connected with that
13 margin.

14 Q. Can we go back to Exhibit 582B which
15 is the objection of Barclays Capital Inc. to the
16 motion filed by the committee. Mr. Hughes, can
17 I direct your attention to page 7 of this
18 document.

19 A. Yup.

20 Q. Paragraph 14, can you read paragraph
21 13 and 14 for me please under the subheading,
22 "The documents sought are irrelevant."

23 A. I've read it.

24 Q. And paragraph 14, the sentence, the
25 paragraph begins, "The FSA documents are

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2 similarly irrelevant to the creditors
3 committee's claims. The FSA letter
4 requests/seeks 10 categories of documents, the
5 first four of which seek documents relating to
6 the 'initial Barclays purchase proposal,' a
7 proposal by Barclays to purchase LBI and related
8 entities that did not go forward and that this
9 court was never asked to approve."

10 Do you see that sentence?

11 A. I do.

12 Q. What's your understanding of the
13 initial Barclays purchase proposal that's
14 referred to in paragraph 14?

15 A. I think I would have to look at the
16 request to be sure what it refers to.

17 Q. Well, --

18 A. I don't have before me the FSA letter
19 request, so I don't know what it is actually
20 seeking.

21 MR. STERN: Is that the prebankruptcy
22 deal?

23 MR. TECCE: Yes.

24 Q. Let me ask you this way, Mr. Hughes,
25 prior to the sale transaction which is at issue

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2 in this litigation, was Barclays engaged in
3 negotiations in August or September of 2008 to
4 acquire Lehman Brothers in a transaction prior
5 to the sale transaction that was the subject --
6 that is the subject of this litigation?

7 A. There was a discussion -- there were
8 discussions during the weekend prior to the 15th
9 to acquire a much -- to do a much bigger
10 transaction and to acquire potentially the whole
11 of Lehman Brothers.

12 Q. That's the -- those are the
13 discussions I'm asking about now.

14 A. So prebankruptcy, yes.

15 Q. Can we call that the prebankruptcy
16 transaction? I understand that it wasn't
17 consummated, but can we refer to it just for
18 ease of convenience?

19 A. Sure.

20 Q. With respect to the prebankruptcy
21 transaction, generally what is your
22 understanding of the structure of that
23 transaction? Had it been consummated, what the
24 structure of the transaction would have been?

25 A. At a very high level, it was -- the

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2 transaction being considered was the acquisition
3 by Barclays of all of the assets and liabilities
4 of the Lehman Brothers Holdings Group, at a very
5 high, summary level. That's essentially what it
6 was about.

7 Q. And was -- and generally why did
8 that -- why was that transaction not ultimately
9 consummated?

10 A. I think there were a number of
11 reasons, included among which were Barclays'
12 views that to -- to consummate that sort of
13 transaction would have involved -- that would
14 have required a substantial degree of financial
15 support and would have required -- without
16 which -- it would have been an inappropriate
17 transaction to conclude from the perspective of
18 Barclays as a regulated bank and from the
19 perspective of its shareholders.

20 So I think there were a lot of other
21 reasons, but fundamentally, it needed financial
22 support of a type that was not available to be
23 able to conclude the transaction.

24 Q. Was the transaction reviewed by
25 Barclays regulators, the Financial Services

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2 Authority?

3 A. I don't know if it was reviewed by the
4 FSA. I think that there were communications
5 between Barclays and the FSA about it. I'm not
6 aware that any transaction was ever submitted to
7 the FSA for its consideration. There were
8 aspects of it I think were discussed.

9 Q. And what's your understanding of the
10 sum and substance of the communications between
11 Barclays and the FSA concerning that
12 transaction?

13 A. I think in sum, Barclays described
14 some of the key elements of the transaction in
15 order to meet its regulatory obligations to --
16 or I should say its obligations to its principal
17 regulator and I believe there were discussions
18 regarding the impact the transaction might have
19 upon Barclays as a regulated entity.

20 Q. Do you have an understanding of what
21 specifically was provided to the FSA by Barclays
22 with respect to that transaction, in terms of
23 actual written documents or materials?

24 A. I'm not aware of the detail of all of
25 the communications. I think in earlier

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2 depositions and in earlier disclosures, some of
3 those documents and some of those discussions
4 have been referred to. For example, I think
5 John Varley gave testimony with respect to some
6 of those discussions and I believe some
7 documents have been disclosed by Barclays. The
8 full detail of them, I couldn't tell you.

9 Q. And were there communications -- what
10 was the manner of the communications, meaning
11 were they by phone, electronic mail? Were they
12 in-person meetings?

13 A. I think they probably included all
14 three of those types of communications at one
15 stage or another.

16 Q. What is the period of time that they
17 took place during the month of -- let me
18 rephrase the question.

19 Were the communications during the
20 month of September or were they at any point
21 prior to that?

22 A. I'm not aware of communications prior
23 to or I would say the 12th of September. It's
24 possible that there may have been communications
25 before that, but I'm not -- I'm not aware of